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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,289	03/01/2004	Kati A. Chevaux	1010/102US4	9500

32260 7590 08/08/2007  
NADA JAIN, P.C.  
560 White Plains Road, Suite 460  
Tarrytown, NY 10591

EXAMINER
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WINSTON, RANDALL O

ART UNIT	PAPER NUMBER
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1655

MAIL DATE	DELIVERY MODE
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08/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/790,289	<b>Applicant(s)</b> CHEVAUX ET AL.	
	<b>Examiner</b> Randall Winston	<b>Art Unit</b> 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-78 is/are pending in the application.
- 4a) Of the above claim(s) 75-78 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

Acknowledgement is made of receipt and entry of the amendment filed on 05/09/2007.

Examiner acknowledges that claims 75-78 have been withdrawn from consideration.

Claims 31-74 are under examination.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-74 still stand rejected under 35 USC 103(a) as being unpatentable over Romanczyk, Jr. (US 5,554,645) in view of Wideman et al. (6,127,421).

In Applicant's response on 05/09/2007, Applicant argues regarding the teachings in Wideman of anti-tumor utilities, the Examiner refers to a background citation therein of Taylor et al. 1992 and the statement that dietary administration of L-arginine to chicken reduces tumor growth. However, applicants submit that as the effective filing date of the above application, the knowledge in the art as to the anti-tumor/cancer effect of dietary arginine supplementation in mammals was highly controversial and various contradictory reports existed in the field as demonstrated in Yeatman T. J. et al. Depletion of Dietary Arginine Inhibits Growth of Metastatic Tumor, Arch. Surg. 1991, 126(11): 1376-92).

Applicant argument is not found persuasive because claims 31-74 still stand rejected under 35 U.S.C. 103(a) as set forth in examiner's non-final office action of 02/09/2007. Although Applicant argues the knowledge in the art as to the anti-tumor/cancer effect of dietary arginine supplementation in mammals was highly controversial and various contradictory reports existed in the field as demonstrated in Yeatman T. J. et al. Depletion of Dietary Arginine Inhibits Growth of Metastatic Tumor, Arch. Surg. 1991, 126(11): 1376-92), Wideman was cited by examiner to remedy the deficiency of Romanczyk. Romanczyk does not expressly teach that the active ingredient of L-arginine is contained within its claimed food composition. Examiner restates to applicant that Wideman does remedy the deficiency of Romanczyk. Wideman beneficially teaches (see, e.g. column 2 lines 30-39) that the incorporation of L-arginine within a food product is used for anti-tumor purposes. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Romanczyk's food composition to include the other claimed active ingredient of L-arginine as taught by Wideman within Romanczyk's food composition because the two above combined teachings would create the claimed food composition used for anti-tumor purposes. Moreover, as discussed in MPEP Section 2114.06, "it is prima facie obvious to combine two or more compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to used for the same purpose..." Furthermore, the adjustment of other conventional working conditions (e.g. the claimed forms of the food composition such as non-chocolate pet food and/or as a peanut and the claimed amounts), is deemed merely a matter of

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judicious selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, the claimed invention was prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

**No claims are allowed.**

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CHRISTOPHER R. TATE  
PRIMARY EXAMINER